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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES HERBERT BROWN, III,

Defendant and Appellant.

2d Crim. No. B190210
(Super. Ct. No. TA079928-01)
(Los Angeles County)

James Herbert Brown, III appeals his conviction, by jury, of possession of cocaine for sale. (Health & Safety Code, § 11351.) The jury further found that appellant committed the offense for the benefit of a criminal street gang. (Pen. Code, § 186.22, subd. (b)(1)(A).)¹ It was unable to reach a verdict on the other alleged offense, possession of a firearm by an ex-felon. (§ 12021.) The trial court sentenced appellant to a term in state prison of seven years. He contends the trial court erred when it denied his motion to suppress evidence of the cocaine on the ground that appellant lacked standing to challenge the search. He further contends the trial court erred when it ruled that any statements he made at the hearing on the motion to suppress would be admissible at trial and that the gang enhancement is not supported by substantial evidence. We affirm.

¹ All statutory references are to the Penal Code unless otherwise stated.

Facts

Two officers from the Los Angeles Police Department were on patrol when they drove past a house on 116th Street. The officers knew that Terrence Adams, a member of the 118 East Coast Crips gang, lived in the house. The officers saw a red Dodge Ram pickup truck with Illinois license plates parked in the driveway, partially blocking the sidewalk. Appellant was standing about three feet away from the open driver's side door of the truck, talking with three or four other men. The patrol car stopped and the officers got out. Appellant looked in their direction. He started to walk toward the front door of the house. Within moments, appellant grabbed his waistband and started running for the front door. He went inside, locking a mesh security door behind him. One of the officers looked through the mesh door and saw appellant standing inside the house with a handgun in his hand. Appellant looked over his shoulder, saw the officer and then walked down a hallway and out of the officer's sight.

Within a few minutes, other officers arrived. The woman who rented the house, Travetta Adams, exited through the front door with four or five other people. Appellant followed close behind. Ms. Adams gave the officers written consent to search the house. The search disclosed a handgun inside a bag hanging on the closet door in Ms. Adams' bedroom. Ms. Adams told the officers that she did not own the gun.

Ms. Adams testified that she lived at the house with her father, her boyfriend and her three children. She understood that her oldest son, 16-year old Terrence, was thought to be a member of 118 East Coast Crips and that he associated with gang members. Her boyfriend was a member of a different gang, and he also associated with members of 118 East Coast Crips.

While the house was being searched, another officer stood near the partially open driver's side door of the pickup truck. He could smell a strong odor of marijuana. Looking inside the truck, the officer saw a paper bag on the driver's seat. The mouth of the bag was open so the officer could see that it held a clear plastic bag which appeared to contain cocaine. The paper bag also held a white plastic grocery bag that was wrapped around something the officer could not see. He opened the truck door, looked inside the

paper bag to confirm his observations and then handed the paper bag to another officer. He conducted no further search of the truck. It was later determined that the white plastic grocery bag contained \$3,499 in cash. The clear plastic bag contained 126.45 grams of powder cocaine. No marijuana was found in the truck, although appellant had a small quantity of it hidden in his shoe.

Appellant was arrested and taken to the police station for booking. A search of his person disclosed a key for the pickup truck, \$730 in cash, and the marijuana in his shoe. Appellant did not tell the arresting or booking officers that he owned the pickup truck. He never claimed to have had permission to park it in Adams' driveway or to be inside her house. Officers were unable to determine who owned the pickup truck because it had out of state license plates and the police computer system could not access those records.

The day after appellant's arrest and on his instructions, Iesha Peterson went to the police station to obtain a release for the truck. Peterson told police that she owned the truck, but in fact she did not. She eventually picked the truck up from the police tow yard, paying the fees with money she obtained from a friend of appellant's.

Discussion

Appellant moved to suppress the cocaine and cash found in the truck on the ground that the warrantless search violated his rights under the Fourth and Fourteenth Amendments to the United States Constitution. He contended that the officer who searched the truck lacked reasonable suspicion to do so. The trial court denied the motion on the ground that appellant lacked standing to challenge the search. Appellant contends that ruling was in error. We disagree.

Appellant had the burden to prove his standing to challenge the legality of the search by demonstrating that he had a legitimate expectation of privacy in the truck. (*People v. Roybal* (1998) 19 Cal.4th 481, 507.) Like the trial court, we determine whether he had such an expectation by considering whether he had a property interest in the truck, whether he had a right to exclude others from it, whether he exhibited a

subjective expectation that the interior of the truck would remain free from governmental invasion, and whether he took normal precautions to maintain his privacy. (*Id.*)

Substantial evidence supports the trial court's ruling that appellant had no legitimate expectation of privacy in the truck, and therefore no standing to challenge the search. First, although appellant had a key in his pocket when he was arrested, he never proved that he owned or legitimately possessed either the key or the truck. (See, e.g., *People v. Melnyk* (1992) 4 Cal.App.4th 1532, 1533 [no legitimate expectation of privacy in stolen vehicle].) He did not tell the police he was the owner of the truck or even acknowledge that he possessed it. Appellant never produced valid registration papers for the truck. He produced no evidence that he lived at Adams' house or had her permission to stay there or to park the truck in her driveway. Appellant did not take normal precautions to exclude others from the interior of the truck. To the contrary, when he saw the officers approaching, appellant walked away from the truck without bothering to close the driver's side door. Nor did he take precautions to maintain any privacy interest he might have had in the paper bag. He left the top of the bag open, so that a person standing outside of the truck could see its contents. (*People v. Root* (1985) 172 Cal.App.3d 774, 779 [no legitimate expectation of privacy in plastic bag not sealed from outside view].) The trial court's ruling that appellant lacked standing to challenge the search was correct.

At the hearing on the motion to suppress, appellant offered to testify that he owned the truck, having bought it shortly before his arrest. The trial court informed appellant that his testimony at the hearing would be an admission that could be used against him at trial. Appellant contends this ruling was in error, that it prevented him from testifying at the hearing and that he was therefore denied a fair trial.

The trial court's comments were in error. Testimony by a defendant at the hearing on a motion to suppress "may not thereafter be admitted against him at trial on the issue of guilt unless he makes no objection." (*Simmons v. United States* (1968) 390 U.S. 377, 394 [88 S.Ct. 967, 19 L.Ed.2d 1247]; see also *People v. Marlow* (2004) 34 Cal.4th 131, 150.) The error was, however, harmless beyond a reasonable doubt.

(*People v. Carter* (2005) 36 Cal.4th 1114, 1142.) Even if appellant was the owner of the truck, he left the door ajar and the paper bag open on the driver's seat so that both the bag and its contents were in plain view from outside. (*Payton v. New York* (1980) 445 U.S. 573, 587 [100 S.Ct. 1371, 63 L.Ed.2d 639]; *People v. Superior Court (Kiefer)* (1970) 3 Cal.3d 807, 816-817; *People v. Sandoval* (1985) 164 Cal.App.3d 958, 963.) The motion to suppress would properly have been denied under the plain view doctrine.

Accordingly, the trial court's erroneous comments which deterred appellant from testifying were harmless. (*People v. Cornejo* (1979) 92 Cal.App.3d 637, 656-657.)

Appellant contends there was no substantial evidence supporting the jury's finding that he possessed the cocaine for the benefit of a criminal street gang. We disagree. Appellant had previously admitted to law enforcement his membership in the 118 East Coast Crips gang. The instant offense occurred in the gang's territory, at the residence of a gang member. An expert on criminal street gangs testified that, in his opinion, cocaine possessed under circumstances similar to those present here would be possessed for the benefit of the gang. This is substantial evidence supporting the jury's finding that appellant acted for the benefit of the gang. (*People v. Mincey* (1992) 2 Cal.4th 408, 433; *People v. Ferraez* (2003) 112 Cal.App.4th 925, 930-931.)

The judgment is affirmed.

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YEGAN, Acting P.J.

We concur:

COFFEE, J.

PERREN, J.

Allen J. Webster, Judge
Superior Court County of Los Angeles

H. Clay Jacke, under appointment by the Court of Appeal, for Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Lance E. Winters, Supervising Deputy Attorney General, Roberta L. Davis, Deputy Attorney General, for Plaintiff and Respondent.